

House Bill 976

By: Representatives Porter of the 143rd, Hugley of the 133rd, Smyre of the 132nd, Orrock of the 58th, Oliver of the 83rd, and others

A BILL TO BE ENTITLED

AN ACT

To amend Chapter 2 of Title 22 of the Official Code of Georgia Annotated, relating to condemnation procedure generally, so as to require that certain declarations of taking be served and filed by condemning bodies; to provide for right of repurchase by the former owner or other disposal if the declared intended use of condemned property has not commenced within a certain period; to define a term; to redesignate certain provisions; to amend Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries, so as to change certain provisions relating to declaration of taking, contests of and attachments to declaration, and conclusive nature of order of condemnation by condemning authority; to change certain provisions relating to abandonment and disposal of property not needed for public road purposes; to amend the Official Code of Georgia Annotated so as to conform certain related cross-references; to provide legislative declarations and findings; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART I

SECTION 1-1.

The General Assembly finds and declares as follows:

(1) "The right of the humblest individual in the enjoyment of his property must be protected. The right to take private property from the owner for public use often works extreme hardship and savors of oppression. Nothing but a public necessity can justify it, and then only in strict conformity with the law." *Williams v. LaGrange*, 213 Ga. 241 (1957);

(2) The issue of what constitutes a legitimate public necessity or public good is raised when the power of eminent domain is exercised by state or local government and property so condemned or an interest therein is soon conveyed "to people who could have no interest in acquiring the property other than as a means to make money." *Housing Authority of*

1 *Atlanta v. Johnson*, 209 Ga. 560 (1953). In the words of our own Georgia Supreme Court,
2 "If the property of one individual can be taken from another for this purpose, where does
3 the power of eminent domain stop? ... 'Public use' means just what it says and means that
4 the power of eminent domain can never be exercised to acquire property to be used by
5 private individuals solely for private use and private gain." *Id.* If even some alleged
6 indirect public benefit, such as an improved tax base, were to result from such
7 condemnation by government and reconveyance for private use and private gain, "we can
8 not subscribe to the doctrine that the power of eminent domain may be resorted to and a
9 person deprived of his property every time there may be some public benefit resulting. To
10 so hold would be to cut the very foundation from under the sacred right to own property."
11 *Id.*;

12 (3) In the exercise of the power of eminent domain by state or local government, the
13 private property rights of residents and businesses should be protected over the speculative
14 interests of private developers and corporations; and

15 (4) The purpose of this Act is to protect the rights of private property owners against the
16 exercise of the power of eminent domain by state or local governments for false and
17 improper purposes.

18 **PART II**

19 **SECTION 2-1.**

20 Chapter 2 of Title 22 of the Official Code of Georgia Annotated, relating to condemnation
21 procedure generally, is amended by redesignating Article 1, relating to proceedings before
22 assessors, as Article 1A of such chapter, and by redesignating Code Section 22-2-1, relating
23 to the definition of "condemnor," as Code Section 22-2-10.

24 **SECTION 2-2.**

25 Said chapter is further amended by adding a new article to read as follows:

26 **"ARTICLE 1**

27 **22-2-1.**

28 As used in this article, the term 'condemning body' means:

- 29 (1) The State of Georgia or any branch of the government of the State of Georgia;
30 (2) Any county or municipality of the State of Georgia;
31 (3) Any state or local government authority; or

(4) Any other political subdivision of the State of Georgia which is vested with the power of eminent domain.

22-2-2.

(a) Concurrent with service of any notice, petition, or declaration of condemnation or taking required by this chapter or any other provision of this Code to be served upon the owner or owners of the property to be condemned, the condemning body seeking to exercise the power of eminent domain shall in addition thereto and in the same manner serve such property owner or owners with a declaration of taking under this Code section signed by:

(1) The head of the state agency, or his or her deputy, seeking to acquire property or interests on behalf of the state;

(2) The county or municipal governing authority seeking to acquire property or interests on behalf of a county or municipality;

(3) The head of the state or local government authority, or his or her deputy, seeking to acquire property or interests on behalf of a state or local government authority; or

(4) The governing body of any other political subdivision seeking to acquire property or interests on behalf of such other political subdivision.

(b) The declaration of taking shall declare that the lands are being taken for the use of the condemning body. The declaration shall contain or have annexed thereto:

(1) A statement of the authority under which, and the public use for which, such lands are taken; a statement of when that use will commence; and a description of how the property will be altered to sustain such use;

(2) A description of the lands taken sufficient for the identification thereof;

(3) A statement of the estate or interest in the lands taken for public use;

(4) A plat showing the lands taken;

(5) A statement of the sum of money estimated by the condemning body to be just compensation for the property taken, including consequential damages to property not taken, accompanied by a sworn copy as an exhibit of the appraiser's statement justifying the sum; and

(6) A certified copy of an order by the signer of the declaration of taking, finding that the circumstances are such that it is necessary to proceed with condemnation in the particular case, that other alternatives are not practicable, and specifically authorizing such condemnation.

(c) Concurrent with or prior to service upon the property owner or owners, a copy of such declaration and any annex thereto shall be filed also in the superior court of each county in which the property lies.

22-2-3.

(a) Any condemning body shall have a period not to exceed three years from the date the estate or interest in the condemned property is acquired in which to commence public use of the condemned property in the manner set forth in the declaration required by Code Section 22-2-2. If such use has not commenced during such period, the condemning body shall dispose of the property in accordance with Code Section 22-2-4.

(b) For purposes of this Code section, if the declared use is the use of a building or structure to be erected or renovated on the condemned property, such use will be deemed to commence when actual erection or renovation of the building or structure commences on the property held by the condemning body, not including land clearing, road building, the laying of utility lines or pipes, or other site preparation.

22-2-4.

(a)(1) In disposing of property pursuant to Code Section 22-2-3, the condemning body shall notify the owner of such property at the time of its acquisition or, if the tract from which the condemning body acquired its property has been subsequently sold, shall notify the owner of abutting land holding title through the owner from whom the condemning body acquired its property. The notice shall be in writing delivered to the appropriate owner or by publication if his or her address is unknown; and he or she shall have the right to acquire, as provided in this subsection, the property with respect to which the notice is given. Publication, if necessary, shall be in a newspaper of general circulation in the county or counties where the property is located.

(2) When a parcel acquired by the condemning body or any interest therein is being disposed of, it may be acquired under the right created in paragraph (1) of this subsection at such price as may be agreed upon, but in no event less than the price paid for its acquisition.

(3) If the right of acquisition is not exercised within 60 days after due notice, the condemning body shall proceed to sell such property as provided in subsection (b) of this Code section.

(b)(1)(A) Unless a sale of the property is made pursuant to paragraph (2) or (3) of this subsection, such sale shall be made to the bidder submitting the highest of the sealed bids received after public advertisement for such bids for two weeks. The condemning

body shall have the right to reject any and all bids, in its discretion, to readvertise, or to abandon the sale.

(B) Such public advertisement shall be inserted once a week in such newspapers or other publication, or both, as will ensure adequate publicity, the first insertion to be at least two weeks prior to the opening of bids, the second to follow one week after the first publication. Such advertisement shall include but not be limited to the following items:

- (i) A description sufficient to enable the public to identify the property;
- (ii) The time and place for submission and opening of sealed bids;
- (iii) The right of the condemning body to reject any one or all of the bids;
- (iv) All the conditions of sale; and
- (v) Such further information as the condemning body may deem advisable as in the public interest.

(2)(A) Such sale of property may be made by a county or municipality by listing the property through a real estate broker licensed under Chapter 40 of Title 43 who has a place of business located in the county where the property is located or outside the county if no such business is located in the county where the property is located. Property shall be listed for a period of at least three months. Such property shall not be sold at less than its fair market value. All sales shall be approved by the governing authority of the county at a regular meeting and shall be open to the public at which meeting public comments shall be allowed regarding such sale.

(B) Commencing at the time of the listing of the property as provided in subparagraph (A) of this paragraph, the county or municipality shall provide for a notice to be inserted once a week for two weeks in the legal organ of the county indicating the names of real estate brokers listing the property for the political subdivision. The county or municipality may advertise in magazines relating to the sale of real estate or similar publications.

(C) The county or municipality shall have the right to reject any and all offers, in its discretion, and to sell such property pursuant to the provisions of paragraph (1) of this subsection.

(3)(A) Such sale of property may be made by a county or municipality to the highest bidder at a public auction conducted by an auctioneer licensed under Chapter 6 of Title 43. Such property shall not be sold at less than its fair market value.

(B) The county or municipality shall provide for a notice to be inserted once a week for the two weeks immediately preceding the auction in the legal organ of the county including, at a minimum, the following items:

- 1 (i) A description sufficient to enable the public to identify the property;
- 2 (ii) The time and place of the public auction;
- 3 (iii) The right of the department or the county or municipality to reject any one or all
- 4 of the bids;
- 5 (iv) All the conditions of sale; and
- 6 (v) Such further information as the department or the county or municipality may
- 7 deem advisable as in the public interest.

8 The county or municipality may advertise in magazines relating to the sale of real estate
9 or similar publications.

10 (C) The county or municipality shall have the right to reject any and all offers, in its
11 discretion, and to sell such property pursuant to the provisions of paragraph (1) of this
12 subsection.

13 (c) Any conveyance of property shall require the approval of the condemning body, by
14 order of the head of the state agency or his or her deputy, by resolution of the county or
15 municipal governing authority as recorded in the minutes of its meeting, by order of the
16 head of the state or local government authority or his or her deputy, or by resolution of the
17 governing body of such other political subdivision of the state that condemned the property
18 as recorded in the minutes of its meeting. If the conveyance is so approved, a quitclaim
19 deed may be executed, conveying such property to the purchaser. All proceeds arising from
20 such sales shall be paid into and constitute a part of the funds of the seller."

21 **PART III**

22 **SECTION 3-1.**

23 Title 32 of the Official Code of Georgia Annotated, relating to highways, bridges, and ferries,
24 is amended by striking Code Section 32-3-6, relating to filing declaration of taking, contents
25 of and attachments to declaration, and conclusive nature of order of condemnation by
26 condemning authority, and inserting in lieu thereof the following:

27 "32-3-6.

28 (a) In addition to the petition filed pursuant to Code Section 32-3-4, the petitioner shall
29 also ~~file with the court~~ serve and file a declaration of taking ~~signed by:~~

30 ~~(1) The commissioner or the deputy commissioner of the Department of Transportation~~
31 ~~if the petitioner is seeking to acquire property or interests on behalf of the department;~~

32 ~~(2) The county governing authority if the petitioner is seeking to condemn for county~~
33 ~~road system purposes or any other public transportation purpose; or~~

34 ~~(3) The municipal governing authority if the petitioner is seeking to condemn for~~
35 ~~municipal street system purposes or any other public transportation purpose.~~

~~(b) The declaration of taking shall declare that the lands are being taken for the use of the condemnor, subject to the order of the court provided for in Code Section 32-3-12. The declaration shall contain or have annexed thereto:~~

~~(1) A statement of the authority under which, and the public use for which, such lands are taken;~~

~~(2) A description of the lands taken sufficient for the identification thereof;~~

~~(3) A statement of the estate or interest in the lands taken for public use;~~

~~(4) A plat showing the lands taken;~~

~~(5) A statement of the sum of money estimated by the condemning authority to be just compensation for the land taken, including consequential damages to land not taken, accompanied by a sworn copy as an exhibit of the appraiser's statement justifying the sum; and~~

~~(6) A certified copy of an order by the commissioner if the property or interest is being condemned for the department or by the county or municipality if the property or interest is being condemned for a county or municipality, finding that the circumstances are such that it is necessary to proceed in the particular case under this article, and specifically authorizing condemnation under this article: in accordance with Code Section 22-2-2.~~

~~(c)(b) Such an An order of the commissioner or governing authority made, served, and filed as part of or annexed to such declaration of taking in accordance with Code Section 22-2-2 shall be conclusive as to the use of the property or interest condemned and as to the authority of the commissioner or governing authority to condemn under this article."~~

SECTION 3-2.

Said title is further amended in Chapter 7, relating to abandonment and disposal of property not needed for public road purposes, by adding a new Code section to read as follows:

"32-7-6.

This chapter shall not apply when disposal of property by a condemning body is required under Article 1 of Chapter 2 of Title 22, in which event the provisions of such article shall control."

PART IV

SECTION 4-1.

The Official Code of Georgia Annotated is amended by striking the term "Article 1 of this chapter" and inserting in lieu thereof "Article 1A of this chapter" wherever the former term appears in the following Code sections:

(1) Code Section 22-2-135, relating to appointment of assessors; and

(2) Code Section 22-2-136, relating to appeal from assessors' award.

SECTION 4-2.

The Official Code of Georgia Annotated is further amended by striking the term "Article 1 of Chapter 2 of this title" and inserting in lieu thereof "Article 1A of this chapter" wherever the former term appears in Code Section 22-2-133, relating to service of process.

SECTION 4-3.

The Official Code of Georgia Annotated is further amended by striking the term "Article 1 of Chapter 2" and inserting in lieu thereof "Article 1A of Chapter 2" wherever the former term appears in the following Code sections:

- (1) Code Section 22-1-7, relating to effect of failure to agree on compensation;
- (2) Code Section 22-3-44, relating to appeal to superior court; and
- (3) Code Section 22-3-120, relating to condemnation for construction of lighthouses, beacons, etc.

SECTION 4-4.

The Official Code of Georgia Annotated is further amended by striking the term "Article 1 of Chapter 2 of Title 22" and inserting in lieu thereof "Article 1A of Chapter 2 of Title 22" wherever the former term appears in the following Code sections:

- (1) Code Section 20-2-522, relating to condemnation procedure;
- (2) Code Section 32-3-15, relating to interlocutory hearing on amount of compensation;
- (3) Code Section 44-9-42, relating to selection of assessors;
- (4) Code Section 44-9-43, relating to show cause order;
- (5) Code Section 44-9-44, relating to appeals from award of assessors;
- (6) Code Section 46-4-57, relating to exercise of right of eminent domain by gas utilities;
- and
- (7) Code Section 50-16-106, relating to manner for determining rights and compensation in condemnation proceedings.

PART V

SECTION 5-1.

All laws and parts of laws in conflict with this Act are repealed.